

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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<b>FERDINAND BENJAMIN</b> , Individually	:	
and as the Personal Representative of the	:	<b>CIVIL ACTION</b>
<b>ESTATE OF ENOCK BENJAMIN</b> ,	:	
deceased,	:	
<i>Plaintiff,</i>	:	
v.	:	
	:	<b>No. 2:20-cv-2594-JP</b>
<b>JBS S.A.,</b>	:	
<b>JBS USA FOOD COMPANY,</b>	:	
<b>JBS USA HOLDINGS, INC.,</b>	:	
<b>JBS SOUDERTON, INC., and</b>	:	
<b>PILGRIM'S PRIDE CORPORATION,</b>	:	
<i>Defendants.</i>	:	

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**[PROPOSED] ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2020, upon consideration of Plaintiff's Motion for Leave to File Notice of Supplemental Authority in Support of Plaintiff's Motion to Remand (Docket No.(s) 17, 29) and Plaintiff's Opposition to Defendants' Motions to Dismiss (Docket No.(s) 20, 31, 39) and any response thereto, it is hereby **ORDERED** that Plaintiff's Motion is **GRANTED**.

The Clerk of Court is directed to enter on the docket for this matter Plaintiffs' Notice of Supplemental Authority attached as Exhibit 1 to Plaintiff's Motion for Leave.

**BY THE COURT:**

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**John R. Padova, J.**

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	:	<b>No. 2:20-cv-2594-JP</b>
<b>JBS S.A.</b> ,	:	
<b>JBS USA FOOD COMPANY</b> ,	:	
<b>JBS USA HOLDINGS, INC.</b> ,	:	
<b>JBS SOUDERTON, INC.</b> , and	:	
<b>PILGRIM'S PRIDE CORPORATION</b> ,	:	
<i>Defendants</i> .	:	

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**PLAINTIFF'S MOTION FOR LEAVE TO FILE NOTICE OF SUPPLEMENTAL AUTHORITY IN SUPPORT OF PLAINTIFF'S MOTION TO REMAND AND PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTIONS TO DISMISS**

Plaintiff, Ferdinand Benjamin, individually and as the Personal Representative for the Estate of Enock Benjamin, pursuant to this Court's Policies and Procedures, respectfully seeks leave to file the Notice of Supplemental Authority in Support of Motion to Dismiss attached hereto as Exhibit 1. In support, Plaintiff relies upon the attached Memorandum of Law which is incorporated herein by reference.

**Respectfully submitted,**

**BY:** /s/ rjm9362  
ROBERT J. MONGELUZZI; ID No. 36283  
STEVEN G. WIGRIZER, ID No. 30369  
JEFFREY P. GOODMAN; ID No. 309433  
JASON S. WEISS; ID No. 310446

**SALTZ MONGELUZZI & BENDESKY P.C.**  
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(215) 496-8282

*Attorneys for Plaintiff*

dated: November 11, 2020

**IN THE UNITED STATES DISTRICT COURT  
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deceased,	:	
<i>Plaintiff</i> ,	:	
v.	:	
	:	<b>No. 2:20-cv-2594-JP</b>
<b>JBS S.A.</b> ,	:	
<b>JBS USA FOOD COMPANY</b> ,	:	
<b>JBS USA HOLDINGS, INC.</b> ,	:	
<b>JBS SOUDERTON, INC.</b> , and	:	
<b>PILGRIM'S PRIDE CORPORATION</b> ,	:	
<i>Defendants</i> .	:	

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**MEMORANDUM OF LAW IN SUPPORT OF  
PLAINTIFF'S MOTION FOR LEAVE TO FILE NOTICE OF SUPPLEMENTAL  
AUTHORITY IN SUPPORT OF PLAINTIFF'S MOTION TO REMAND AND  
PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTIONS TO DISMISS**

Plaintiff, Ferdinand Benjamin, individually and as the Personal Representative for the Estate of Enock Benjamin, respectfully submits this Memorandum of Law in support of his Motion for Leave to file Notice of Supplemental Authority in Support of Plaintiff's Motion to Remand and Plaintiff's Opposition to Defendants' Motion to Dismiss. Specifically, Plaintiff seeks to provide notice to the Court of the holding of the *Estate of Elizabeth Wiles v. Comprehensive Healthcare Management Services, LLC*, Civ. No. 2:20-cv-01198-AJS (W.D. Pa. October 16, 2020).

In Defendants' Motion for Leave to File Notice of Supplemental Authority (Doc. No. 43), the legal standard for this motion was appropriately set forth as follows:

Courts may grant leave to file briefs if it finds that doing so would be helpful in resolving the matter at issue. See *McNiff v. Asset Mgt. Specialists, Inc.*, 337 F. Supp. 2d 685, 687 n.1 (E.D. Pa. 2004); *Marchbanks Truck Serv., Inc. v. Comdata Network, Inc.*, Civil Action No. 07-cv-01078, 2011 WL 11559549, at \*18 (E.D. Pa. Mar. 24, 2011) (exercising discretion to consider plaintiff's first notice of supplemental authority and defendant's response "as supplemental

briefing . . . to the extent they are helpful in disposition of the issues at hand”);  
*see also* Local R. Civ. P. 7.1(c).

(See Doc. No. 43 at 4.)

On April 3, 2020, Enock Benjamin died of respiratory failure caused by COVID-19. Mr. Benjamin contracted the virus while working at the JBS beef processing plant in Souderton, PA.

On May 7, 2020, Plaintiff initiated this civil action in the Court of Common Pleas of Philadelphia County. (Doc. No. 1-1.)

On June 2, 2020, defendant, JBS USA Food Company removed this action to this Court allegedly based upon diversity jurisdiction, fraudulent joinder, and federal question jurisdiction. (Doc. No. 1.)

On June 16, 2020, defendants JBS USA Food Company, JBS Souderton, Inc., JBS USA Holdings, Inc., and Pilgrim’s Pride Corporation filed a Motion to Dismiss. (Doc. No. 15.) Plaintiff opposed this Motion and both parties filed Sur Replies. (Doc. No.(s) 20, 25, 31.)

On June 29, 2020, Plaintiff filed a Motion to Remand to State Court. (Doc. No. 17.) Defendants opposed this Motion and Plaintiff filed a Sur Reply. (Doc. No.(s) 21, 29.)

On September 16, 2020, JBS S.A. filed a Motion to Dismiss. (Doc. No. 36.) Plaintiff opposed this motion and JBS S.A. filed a Sur Reply. (Doc. No(s). 39, 42.)

On November 5, 2020, Defendants filed a Motion for Leave to File Notice of Supplemental Authority in Support of Defendants’ Motion to Dismiss. (Doc. No. 43.)

Defendants have stated that, in the event their motion is granted, “Defendants have no objection to Plaintiff being granted an opportunity to submit a responsive brief of similar length, if he so desires.” (Dock. No. 43 at 5.) As Plaintiff has no objection to Defendants’ motion, it is requested that the same courtesy will be extended.

All previous arguments, facts, and exhibits filed previously in this matter are hereby incorporated by reference, including any and all arguments related to primary jurisdiction.

Plaintiff respectfully submits that *Wiles*, and the attendant discussion in the Notice of Supplemental Authority may be persuasive to the Court in resolving the motions referenced above.

For the foregoing reasons, Plaintiff respectfully requests that this Court grant this Motion and enter an Order in the form attached.

**Respectfully submitted,**

**BY:** /s/ rjm9362

ROBERT J. MONGELUZZI; ID No. 36283  
STEVEN G. WIGRIZER, ID No. 30369  
JEFFREY P. GOODMAN; ID No. 309433  
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<b>JBS SOUDERTON, INC., and</b>	:	
<b>PILGRIM'S PRIDE CORPORATION,</b>	:	
<i>Defendants.</i>	:	

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**CERTIFICATE OF SERVICE**

I hereby certify that I caused a true and correct copy of Plaintiff's Motion for Extension of Time, and accompanying Memorandum of Law, to be served via the Court's CM/ECF system on the following:

Molly E. Flynn, Esq.  
Mark D. Taticchi, Esq.  
Rebecca L. Trela, Esq.  
*Faegre Drinker Biddle & Reath LLP*  
One Logan Square, Suite 2000  
Philadelphia, PA 19103

*Attorneys for JBS USA Food Co., JBS USA Holdings, Inc., JBS Souderton, Inc. and Pilgrim's Pride Corporation*

**BY: /s/ Robert J. Mongeluzzi**

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